There has been a great deal of argument, a great deal of testimony, about the auto-feathering system and so forth, but whatever conclusions you may come to in any regard, if it relates to the auto-feathering system, that relates only to Eastern and not to Lockheed.

Now, members of the jury, finally we will go to the issue between the plaintiff and Lockheed. The plaintiff argues to you, and as presented in the testimony in support of his position, that this plane was not safely designed; that Lockheed knew or should have known of the possibility of the ingestion of birds into the plane which would result in a loss of power in the engines. The plaintiff argues to you that Lockheed sold this plane after research which could have disclosed the possibility of bird ingestion or failed to make sufficient research which would have disclosed this possibility.

Again, applying the legal principles which I have previously given to you, if you should conclude from all the evidence that Lockheed was negligent in the design of this plane, then you could find in favor of the plaintiff and against

[4192]

Lockheed.

Now, as to the position of the defendants, Eastern states and argues that this accident occurred by a unique congestion of things that had never before happened in the history of aviation. They further argue that the accident did not result from anything concerned with the seat in the airplane but was solely caused by the ingestion of birds, and they further argue that the auto-feathering system was a safe device.

As to these defenses, members of the jury, you will of course apply the same principles of law. You will have to conclude from the evidence if you find that such an acci-

dent never happened before, whether that relieves Eastern from liability based upon the legal principles which have been recited.

In conclusion, members of the jury, I am sorry you have been kept so long; I guess I have been saying that to you for about six weeks now, but you will be sworn in in a few moments by the Marshal. He will take you to lunch and then you will come back and finish your deliberations. If you have any questions, it must be in writing, it must be submitted by your Foreman.

You have been so patient so far. I hope you will continue to be patient and that you will reach a just and fair verdict in this case. As I say again, the only problem before

[4193]

you is one of liability.

I guess we have covered everything.

Mr. McConnell: Yes, Your Honor. Thank you.

The Court: All right.

Oh, by the way, the alternates will go to lunch and then when the jury starts its deliberations you will come down to my chambers. I will tell you what to do from there on.

Mr. Wickenhaver: Do you wish to excuse the alternates at this time?

The Court: Oh, no, not until they start deliberating.

Mr. McConnell: Did Your Honor wish us to approach the Bench?

The Court: No.

(Discussion off the record.)

(The Marshal was duly sworn.)

Mr. McCabe: Judge, may I ask one thing, just to be absolutely certain? Am I correct in assuming that it is not necessary for us to reassert at this time those exceptions that have already been discussed?

The Court: No, they are all in the record. The record is perfectly clear.

(The jury retired at 12:24 o'clock P. M.)

(All exhibits with the exception of P-251, 252,

[4194]

253, DE-110, 111, 129, 130, 138, 139, 140, US-1 and Court Exhibit 1 were sent out with the jury.)